

Rural Utilities Service, USDA

§ 1779.20

index.htm), the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate any adverse environmental effects. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design will incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. The lender must assist the Agency in ensuring that the borrower complies with the Agency's environmental review process and implements any mitigation measure identified in the environmental review document or Conditional Commitment for Guarantee. This assistance includes ensuring that the borrower takes no action (for example, initiation of construction) or incur any obligations that will have an adverse environmental impact or limit the range of alternatives to be considered prior to completion of the environmental review process. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to the approval of the applicant's request or commitment of Agency resources.

§§ 1779.10–1779.11 [Reserved]

§ 1779.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties in interest. Agency inspections do not relieve any parties in interest of

their responsibilities to conduct necessary inspections.

§ 1779.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 1779.14–1779.16 [Reserved]

§ 1779.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1779.18–1779.19 [Reserved]

§ 1779.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.* (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They

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must also have legal authority for obtaining, giving security for, and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(c) *Applicant.* Eligible entities are:

(1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except: For utility services such as drinking water, sanitary sewer, solid waste disposal or storm drainage facilities serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(e) *Facilities for public use.* All facilities financed under the provisions of this part shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms,

or conditions do not necessarily constitute inequities.

§§ 1779.21–1779.23 [Reserved]

§ 1779.24 Eligible loan purposes.

(a) To construct, enlarge, extend, or otherwise improve rural drinking water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) For payment of other utility connection charges as provided in service contracts between utility systems.

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(2) Costs of acquiring interest in land: rights, such as water rights; leases; permits; rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(3) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(4) Cost of additional applicant labor and other expenses necessary to install and extend service;

(5) In unusual cases such as a low-income area, the cost for connecting the user to the main service line;

(6) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;